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Ombudsman Ontario
17 AUGUST 1992

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A special report to the legislature

Ombudsman

ONTARIO

government

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17 August, 1992

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto

Dear Speaker:

I am submitting to you this special report on the affairs of my office so that you might cause it to be laid before the Assembly, pursuant to Section 11 of the *Ombudsman Act*.

Roberta L. Jamieson
Ombudsman

MESSAGE FROM THE OMBUDSMAN

On May 28, 1992, the Standing Committee on the Ombudsman made its Report to the Legislature about the Annual Reports that I presented to the Speaker in June, 1990, and June, 1991. The Committee's Report contained recommendations which, if adopted by the Legislature, would raise significant questions about the role of the Ombudsman, her ability to maintain confidentiality, and the Ombudsman's freedom to be neutral, impartial, and to act independently.

Shortly after tabling its Report, the Standing Committee requested the Public Accounts Committee to mandate the Provincial Auditor to do a "value-for-money" audit of the Ombudsman. While no financial impropriety was suggested, the reasons why the audit was requested at the time were not set out, raising disturbing questions in the public's mind.

The Ombudsman was characterized as being surrounded by controversy, as no longer having the respect of the people for

the way in which complaints have been processed. It is said there are concerns about "what is going on" in the office of the Ombudsman and that these concerns are shared by all caucuses. It has been said the Office of the Ombudsman has been "under a lot of controversy over the last year."

The net result of these actions and accompanying comments on the public record have caused considerable damage to the credibility and prestige of the Office of Ombudsman. The damage has not come from dissatisfied complainants or any external source. The damage has come from Members of the Legislature, however unintended this result might have been.

Already we are experiencing the fallout from these unsubstantiated allegations. Community groups from around the province have expressed their concerns that our attempts to reach out to all Ontarians may be at risk; complainants have are concerned about receiving a fair hearing; government institutions are already beginning to be less cooperative.

It is difficult for me to reply since no details are provided, nor any substantiation given for the statements, nor has there been an opportunity to reply. I am not aware that the Standing Committee on the Ombudsman has been flooded with complaints, nor has there been a wave of criticism in the media. Indeed, all the indication I have is to the contrary.

Unfortunately, no Member has come to me to discuss either their concerns or the controversy. If the concern is about the public education campaign I conducted this spring, this information was fully presented in a special presentation to the Board of Internal Economy of the Legislature. In the end, I do not know the basis for the negative comments.

As a person who deals daily with questions of fairness, it seems to me to be unfair to speak of "a lot of controversy" without having first brought the controversy to my attention so it could be discussed. If problems were brought to my attention, I would be the first to respond to them.

I have made efforts to meet with the Committee to develop a cooperative working relationship since my appointment three years ago. The ideal I have attempted to achieve is one set out by the Select Committee on the Ombudsman in 1977: "The essence of the relationship between the Assembly and the Ombudsman does not lie in any legislative definition of jurisdiction, but in good faith, mutual respect and cooperation, with open and free discussion between this Committee and the Ombudsman."

This ideal implies that there must be reciprocity from those who have an impact on the way the Ombudsman operates, and the way she is perceived to operate. I feel the required reciprocity has been lacking. The current circumstances will need to change, since they are not currently conducive to our success.

I regret that the Committee made its recommendations without the benefit of consultation with me despite my efforts to engage the Committee in dialogue regarding the respective roles of the Ombudsman and the Standing Committee. I have enclosed in Appendix A excerpts of the correspondence I have had with the Committee.

I also regret that I have not been provided with an opportunity to respond to the 19th Report. Further, the Committee has not given me an opportunity to discuss with them my 1991-92 Annual Report which was tabled in June of this year, and which speaks to many of the fundamental issues we must address.

Since the tabling of the 19th Report, the Committee has proceeded to undertake a review of the Ombudsman. It has scheduled hearings, and has contacted witnesses to testify. I have been invited to appear under the same conditions as others, without regard for the very different nature of any testimony that I might make.

Before I can assist the Committee with the subsidiary questions which it would like to consider in the context of a review, agreement should be reached on the fundamental issues. In the

current atmosphere, my participation in a review would only add to the perception that the Ombudsman is no longer an independent Officer of the Legislature.

Since the Committee has already set out certain conclusions in its 19th Report which I consider would alter and weaken the Ombudsman's mandate, I believe the best way for me to respond is to delay any appearance before the Committee until there is a full opportunity to hold a well-reasoned, open-minded dialogue with the Committee on our respective roles and their interrelationship.

My objective for submitting this Special Report to the Legislature is to help everyone who believes in the importance of an effective ombudsman to understand the special nature of the institution. It is my sincere hope that all of us who are part of the ombudsman process can "begin again." I strongly believe that we can work together to ensure that the public receives the service that they need and desire.

Roberta Jamieson
August 17, 1992

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INTRODUCTION

The 19th Report of the Standing Committee on the Ombudsman has recommended various courses of action which would, if adopted, severely impair the ability of the Ombudsman to fulfil her responsibilities. The recommendations would put the Ombudsman in a position little different than that of a governmental organization.

It is an important distinction. The Ombudsman is an Officer of the Legislature. This puts her at an *arm's length* from the agencies she investigates. This distinction is an important element in her ability to investigate impartially and without the pressures that can be brought against government organizations.

In creating the office in Ontario, certain principles which characterize the Ombudsman internationally were confirmed by the Legislature: independence from political expediency; a promise to respect the confidentiality of all parties; an open mind about the facts of the complaint; and a need for the continuing trust and respect of the legislature.

There are many reasons why an Ombudsman could come to be at odds with one or more Members of the Legislature — in fact,

this has been the situation to varying degrees with every Ombudsman Ontario has ever had. Some of the veteran Members now in the Assembly have participated in debates on the very issues raised in this Special Report. I have provided excerpts of correspondence between previous Ombudsman and previous Committee's in Appendix B.

There is no other institution like the Ombudsman. Unless Members and the public understand the principles that allow for an effective ombudsman, it is easy to understand how the public and Members alike would consider the Ombudsman as just another agency of the government.

Given the role of Members of the Legislative Assembly in dealing with complaints brought to them by constituents, the possibility of confusing that role with the Ombudsman's role is easy to see. Given the supremacy of the Legislature in Canada's political system, it is understandable that the reasons an Ombudsman was given independence from the Legislature could now have been forgotten or could be an ongoing source of friction.

Contents of the Report

This report attempts to help the Legislature understand the role and function of the Ombudsman. In this discussion, we will examine the recommendations of the 19th Report of the Standing Committee of the Ombudsman and the impact of the adoption of the Committee's recommendations.

The following section is an introduction of the principles that are necessary if the Ombudsman is to be effective. This is followed by an explanation of how the Standing Committee's recommendations would impair the function of the Ombudsman's office and would put at risk the public's need for an impartial and independent place of "last resort." It also includes a discussion of the issues that must be resolved in order to develop the best service for the public.

PRINCIPLES OF OMBUDSMANSHIP

In the experience of ombudsman around the world, there are basic conditions that must be met in order to ensure their effectiveness in fairly investigating complaints against government action.

- The Ombudsman must be protected from interference or influence by government, the public service, and the political aspects of the Legislature;

- The Ombudsman must have a broad range of discretion in which to exercise her judgment in accord with internationally established administrative fairness principles, and be free to exercise it;

- The Ombudsman must be able to maintain confidentiality so that the public will seek her assistance, so privacy will be maintained, and the public service will not be adversely affected by unfair accusations;

- Since the Ombudsman's power is only to recommend, the Ombudsman is able to remedy unfairness through the

respect, confidence, and trust which is shown for the integrity of the Ombudsman;

This section examines principles that must be recognized by all parties to the process: the legislature, the public, and government organizations.

Independence from Political Expediency

"Independence is thus one of the principal characteristics required for an Ombudsman to be recognized as such. It is also one of the elements essential to the smooth operation of the institution, since this quality is linked to the credibility of the Ombudsman... As important as the institution's independence is the appearance of its independence... For this reason, the Committee on Institutions gave priority in its hearings to questions related to the independence of the Public Protector."

— Final Report, Quebec National Assembly Committee on Institutions, November, 1991

Only if the Ombudsman is truly independent of government, the public service, and the political aspects of the Legislature can she fulfil her mandate in the objective and neutral manner the Legislature intended. If she is directed in any way, neither the Legislature or public can be confident that the Ombudsman is truly assisting persons to resolve complaints they have about unfairness in governmental administration.

Even if there is in fact no constraint, the possibility of it being applied from any direction can jeopardize the credibility which she requires to be accepted by the public and listened to by the public service. A public opinion survey conducted by the Ombudsman in 1991 showed that the public regards the Ombudsman's independence as an important requirement, but

there is considerable scepticism that the independence truly exists.

Protection of the Ombudsman from outside pressures is necessary because of the fundamental nature of the Ombudsman's work. Some examples:

- A governmental agency which has been criticized by the Ombudsman or even the government itself might wish to reduce the Ombudsman's power and/or prestige, or to shape the results of an Ombudsman's investigation.

- Members of the Opposition might wish to pressure the Ombudsman to release information about government operations which would be useful for their political purposes.

- A Member of the Legislature might be concerned because the Ombudsman did not support the complaint of a constituent and may wish to advocate for a different decision.

It is natural to expect these feelings would arise from time to time, and that moves would be made to curtail the Ombudsman's freedom to act independently or to reduce the Ombudsman's powers.

Among the factors which can contribute to her independence and the appearance of independence is her status as an Officer of the Legislature. This underpins the concept that the government is responsible to the Legislature for governmental administration. It is through the Legislature that the public holds governmental organizations accountable for any unfairness shown in their administration. The legislature created the Ombudsman to investigate the public's complaints about government action. However, one further step was taken: the Legislature placed the Ombudsman at arm's length from its own reach by virtue of the *Ombudsman Act* so that the Legislature's political aspects could not impinge upon the independence of the Ombudsman.

Measures were taken to give the Ombudsman authority over her staff's salaries and benefits, to prevent the government from cutting the Ombudsman's salary, to allow the Ombudsman to make all decisions with respect to accommodations and other matters. This was wisely done so that through the use of its majority in the Legislature no government could ever use financial pressures to direct the investigations, findings or recommendations of the Ombudsman.

The Ombudsman is appointed for a ten-year term with all-party consent. She might potentially outlast the government of the day. As a result, the Ombudsman is seen as having the freedom to make her decisions based on the evidence and her discretion and impartial judgment, protected from the political currents of Government and Opposition alike. These factors give the public reassurance that the Ombudsman has these significant protections from inappropriate interference or pressures.

In my 1990-1991 Annual Report, I commented on the question of the Ombudsman's independence from outside pressures:

> "It is at the heart of the Ombudsman's essential purpose that she be independent of government, and without bias in the conduct of her investigations. This enables the Ombudsman to be seen as an objective means of improving the level of fairness in government administration. This independence and neutrality must both be demonstrated and appear to be demonstrated in every act, since the survey I conducted indicates [that] the Ontario public is sceptical that the Ombudsman really is independent... In my public speaking, I emphasize the value both to the public and to government to maintain this vital independence so that the Ombudsman may continue to be an effective instrument of improved public administration."

Without demonstrated independence, the public or even political parties might suspect that the Ombudsman had been pressured to take on an investigation, or to abandon one, or to water down findings and recommendations. All decisions of the Ombudsman

would then be suspect, especially regarding those involving her discretion to launch an investigation on her own motion.

Integrity and Respect for the Institution

The Ombudsman relies upon respect for her office to obtain the implementation of her recommendations by governmental organizations. For that respect to be shown, she must not only exhibit great integrity, but she must be shown respect by the Legislature.

There are few parliamentary traditions about the Ombudsman. Some guidance might be found in considering another Officer of the Legislature, the Speaker. Referring to the Speaker, Beauchesne says that as an Officer of the Legislature he is:

> "... entitled on all occasions to be treated with the greatest attention and respect by the individual Members because the Office embodies the power, dignity, and honour of the House itself ... Reflections upon the character or actions of the Speaker may be punished as breaches of privilege... Many conventions exist which have as their object not only to ensure the impartiality of the Speaker, but also to ensure that there is a general recognition of the Speaker's impartiality..."

The Ombudsman is much newer on the scene than the ancient office of Speaker, and there is confusion over where the Ombudsman fits in to the general scheme of things. Time has eroded many of the unwritten assumptions which might have been in place at the time. Filling these gaps is important if the Ontario Ombudsman is to be strengthened in her work.

In 1978, the Select Committee on the Ombudsman travelled to Denmark, Sweden, Israel, England and Scotland to study the operations of the Ombudsman. Upon its return it noted:

"[All Ombudsman] share a common objective: ultimately to serve the public... To reach that objective, it is vitally important for every segment of society touched by the Ombudsman's functions, the public, the public service, the Government and Parliament to have respect for and support for the Ombudsman's actions and functions...

"Apart from the need for a clarity of relationship, and probably more important than this, the Committee learned that a deep personal respect is necessary to the functioning of the office; a sense which has not yet been developed in Ontario of the dignity and integrity of this office which can only be engendered and maintained by a mutuality of understanding on the part of the legislature and the government generally towards the office and person of the Ombudsman ... and by the Ombudsman towards the elected members and all others touched by his function..."

"[The Ombudsman] must be placed in a position where he is not constantly looking over his shoulder, concerned with the Committee's, the Legislature's, and the Government's reaction to a particular course of conduct..."

Protecting Confidentiality

The principle of the Ombudsman's ability to protect confidentiality must be examined against the trend for greater openness in government. This trend has led, for example, to the creation of the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

For the Ombudsman, the question is how to balance the need to be open with the need to maintain the high degree of confidentiality required for an Ombudsman to have the confidence of both public and governmental organizations. Traditionally, the Ombudsman is able to offer complainants, public servants, and third parties complete confidentiality with respect to information they might provide. This encourages

complainants who might not otherwise come forward to do so, and it permits public servants to be frank in their discussions with the Ombudsman's investigators.

It is also important to keep the Ombudsman away from political controversy. Confidentiality cannot be broken even for Members of the Legislature. The exception is where a Member has brought the complaint forward personally as a complainant after receiving it from the person affected. Complaints against governmental organizations are understandably of interest to opposition parties and government alike — the former desiring exposure, and the latter wishing to avoid embarrassment.

As I explained to the Standing Committee in November, 1991, regarding requests it was making to me for privileged information:

> "For people to come forward to my office without fear, for officials to be forthcoming in their discussions with me, they must have 100% assurance that their dealings with me are completely confidential. Without this assurance, many members of the public will not come forward with their complaints and government agencies will resist disclosing information to the Ombudsman.
>
> "Not only is confidentiality a keystone, but in Ontario it is legislated both for me and my staff in very broad and complete terms... That kind of privileged relationship is, I believe, essential if the office of the Ombudsman is to have the highest possible credibility with the people of the province. Confidentiality is particularly important because the Ombudsman has extremely broad powers of investigation coupled with an extremely broad mandate...

The need for confidentiality goes beyond the interests of complainants. Persons interviewed in the investigation might not want to be forthcoming. Public servants might withhold important information. The quality of investigations would suffer if confidentiality could not be assured. I would find myself in

court regularly seeking to obtain orders to disclose information. I am often able to resolve issues because I can also offer confidentiality to the governmental organization. People are more willing to volunteer information and suggest solutions.

Since a complaint may not be supported, confidentiality also protects innocent persons from damage caused by unfounded allegations or other adverse effects.

The *Act* allows the Ombudsman to disclose only the information which, in her discretion, is required to establish a basis for the conclusions and recommendations. She communicates this information to the parties to a complaint: the complainant and the governmental organization. Even there, the Ombudsman must exercise discretion so that information is revealed only when it is necessary to do so in order to balance individual and public interest. The prohibition is so complete that the Ombudsman and her staff may not be called to give evidence in any court or in any proceedings of a judicial nature [s.24(2)].

Despite this legislated prohibition, I received a letter from the Clerk of the Committee that a Mr. W. had requested the committee to consider his file. "I would appreciate it if you would forward his file to my office for use by the Subcommittee." A similar request was received a month later with respect to a Mr. S. Over and above the confidentiality provisions of the *Act*, in neither case was consideration given to the confidentiality of others involved in the complaint.

My interpretation of the requirement of confidentiality imposed upon me by the *Ombudsman Act* and the very nature of the Ombudsman concept is that confidentiality is absolute. There is no such thing as "partial confidentiality." Even a release provided by a complainant cannot permit the Ombudsman to ignore provisions of the *Act*.

Other than statutory provisions providing the complainant and the governmental organization with certain information regarding an investigation, there is no authority for the Ombudsman to release information specific to an individual's complaint. The

exception is when the Ombudsman finds it necessary to make a report in an anonymized form to the Legislature about a case under s.12 of the *Act*. At that point she may only disclose "such matters as in her opinion ought to be disclosed in order to establish grounds for her conclusions and recommendations."

The Ombudsman must resist any measures which could, or appear, to violate the trust that all parties have that investigations will be conducted in a manner which protects confidentiality. If the Ombudsman allowed anyone, even a Committee of the Legislature, to breach this privacy, the confidence would be lost.

This is not to say that the operations of the Ombudsman should be cloaked in mystery and hidden from public view. I am always pleased to provide any Member or Committee with full information on the policies and procedures which I employ in my investigations, and I have often done so when the Committee has raised an issue with me.

The Ombudsman as the Last Resort

The Ombudsman is the "last resort" when all other avenues of appeal have been exhausted. It is inevitable that complainants who are not satisfied with the Ombudsman's decision will continue to wish the Ombudsman to reconsider and reinvestigate.

If the Ombudsman does not accede to the complainant's requests, they may complain that she has not properly considered their case. Occasionally, these complaints will be made to the Standing Committee.

The question is what is the Committee to do with these complaints if the Ombudsman is truly the "last resort." In order to accommodate the legitimate concerns of the Committee within the requirement to maintain confidentiality, I adopted a working arrangement which I hoped would be satisfactory and which in fact I have used for some time.

The Committee has written me with concerns that had been brought to its attention, such as a complainant desiring a reinvestigation. I have given personal attention to the re-examination of the concerns. I then responded to the Committee with a statement explaining how I handle cases such as the one it brought to my attention. This is so that the Committee can consider questions of procedural fairness.

Conclusion

Each of the principles of ombudsmanship must be respected by all parties to the process. The undermining of any of the principles may easily defeat the purpose for which the Ombudsman was created.

RESPONSE TO THE STANDING COMMITTEE'S 19TH REPORT

The 19th Report of the Standing Committee on the Ombudsman makes a number of recommendations that will in all likelihood be harmful to the ability of the Ombudsman to serve the public and government. The adoption of the recommendations by the Legislature, compounded by the inaccurate allegations must be examined.

This examination will be illustrative of the misconceptions that surround the Ombudsman's operations. It will also point out the lack of awareness of the importance of the principles underlying ombudsmanship.

For example, statements have been placed on the public record that the Ombudsman has engaged in a massive advertising campaign "for the intention of building up business so that they can keep the fairly substantial staff that they retain to deal with the backlog. In other words, they're trying to create work for themselves."

This statement contains several errors:

- I don't have and haven't had a backlog.
- At no time in my tenure have any additional staff been retained. My staff allotment of 129 is the same as that of my predecessor. The actual number of staff is, in fact, just seven more than that of the very first Ombudsman who had a staff of 122 in 1977.
- The Board of Internal Economy recognizes that I have taken every possible internal economy so that, despite an increased workload, I have not had to request extra funds.

This section will look more closely at the issues raised in this example as well as the recommendations of the Standing Committee.

Complaints about Investigations

Over the last 30 months, since its last Report, the Committee had considered nine complaints from the public, three of which it decided lacked merit. In conducting its reviews, according to the Committee, there continued to be two outstanding issues:

1. The release of documents by the Ombudsman to the Committee.
2. The disclosure of information to the Committee concerning my investigations of complaints.

The Committee considered that my insistence on protecting the confidentiality of **all** parties to the complaint and my interpretation of the *Act* is "questionable" and "presents an unnecessary obstacle to the Committee in its review of complaints from the public."

Complainants are free, of course, to provide to the Committee any correspondence they have received from me, as well as documents they have provided to me. In fact, the Committee noted in its Report [page 35] that this approach has the advantage of enabling the Committee to proceed immediately with a number of complaints which were outstanding. I will not, however, compromise the confidentiality entrusted in me by the parties to the complaint.

The "Court of Last Appeal"

Recently, some misunderstanding has occurred concerning the role of the Ombudsman as the place of last appeal. The Ombudsman is the place of last resort after all other avenues of appeal have been exhausted. There is no "court of appeal" to the Ombudsman's recommendations. Dissatisfied complainants who do not understand or accept the role of the Ombudsman will however, appeal to the Standing Committee.

In 1984, the Standing Committee noted that, although each communication from the public would be judged on its merits, "only those will be actively pursued by the Committee which will assist it in fulfilling its order of reference" [i.e., making general rules for the guidance of the Ombudsman].
The Committee of 1984 approved a document for distribution to communicants.

> "It is most unusual for the Subcommittee to recommend any action... This reflects the Committee's strongly held view that, except in the most unusual circumstances, the Committee should not even consider intervention in complaints investigated by the Ombudsman. **The Committee has consistently refused to act as an appeal body for cases in which persons who have complained to the Ombudsman are not satisfied by or disagree with the conclusions reached by the Ombudsman."**

If the current Committee examines the handling of specific cases, it will inevitably take on the role of a "Court of Appeal." This is a role the Committee itself has specifically rejected. It would be misleading for the public to believe that the Committee might be able somehow to overturn or vary the Ombudsman's report and recommendations which, in the last analysis, are recommendations, not orders.

The Committee, in its recommendation #8, recommended that I bring an application pursuant to s.14(5) of the *Ombudsman Act* to clarify these questions. Recommendation #9 states that if the application suggested in #8 does not support the Committee's point of view, the *Act* be amended to conform with the Committee's view. I consider both recommendations to be ill-advised for two reasons:

1. I would not be able to bring an application under s.14(5) with respect to this question since this section applies only to questions of my jurisdiction. s.14(5)) states: "If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Divisional Court for a declaratory order determining the question."

2. It seems inappropriate for the Legislature to order its Officer to obtain a declaratory judgment which would clarify what the intentions of the Legislature are. If the Legislature wishes to make it clear that it wishes the Ombudsman to provide it with documents, it has the option of changing the legislation. In fact, the Committee has recommended that in the event a court action is unsuccessful in maintaining its point of view, that the *Ombudsman Act* should be amended to give it access to the Ombudsman's documents.

I do not recommend, of course, that the latter course of action be taken. The public and public service alike depend upon the confidentiality of the Ombudsman as an essential ingredient in the prompt, fair, and efficient resolution of complaints. For the Legislature to open the Ombudsman's file cabinets, even slightly, removes this protection, and, in my opinion, would be

seen by the public as a retrograde action. I could no longer hold out the promise that information provided to me could be kept in confidence.

I have carefully considered this matter. The advice I have received and my own determination is that the *Ombudsman Act* prohibits me from releasing documents to the Committee. I add that this is a prohibition which I welcome since it enhances the credibility of the Ombudsman as a keeper of confidence.

I will, of course, continue to provide the Committee with all information regarding policies and procedures in order to fulfil its terms of reference, and to provide me with suggestions for improvements.

Recommendation ***That Committee recommendations #8 and #9 should not be implemented.***

Recommendation ***That the Legislature recognize that the direction taken by the Committee in recommendations 10-20 would, if complied with, infringe upon the legislated independence of the Ombudsman.***

The Question of "Delay"

The Committee has concluded through its analysis of the communications received from the public that there is excessive delay in the review of complaints. In the analysis, however, the necessary and very important distinction between "delay" and "time required" was not made.

"Delay" is when a complainant is not attended to by the Ombudsman, or when the governmental organization is permitted by the Ombudsman to take an unreasonable length of time to respond. Delay is when there is little or no activity on a file.

"Time required" is not "delay." The procedural and fairness requirements inherent in the Ombudsman process may lead to what may be a considerable period of time to deal with a matter, but one could not describe the resulting situation as "delay." A full investigation, allowing the governmental organization time to respond, investigate, make tentative findings, and obtain a response from the governmental organization, may require many months. This is not "delay."

The Subcommittee noted in its 19th Report that it had received nine complaints from the public since the Committee's last report, a time period in which the Ombudsman handled approximately 75,000 complaints.

Of these complaints, the subcommittee concluded that the Ombudsman had conducted a complete and fair investigation in three cases. In each of the other cases, the subcommittee recommended that some further action be taken. Three involved concerns about "delay."

In fact, the vast majority of files currently open are less than twelve months old. As an example, of the 738 complaint files that were open on August 6, 1992, over 50% are less than six months old. This one day "snap shot" is representative of the thousands of cases that the Ombudsman opens each year. Exhibit A below shows a breakdown of the age of these files.

Exhibit A

Age of Files in Progress
(As at August 1992)

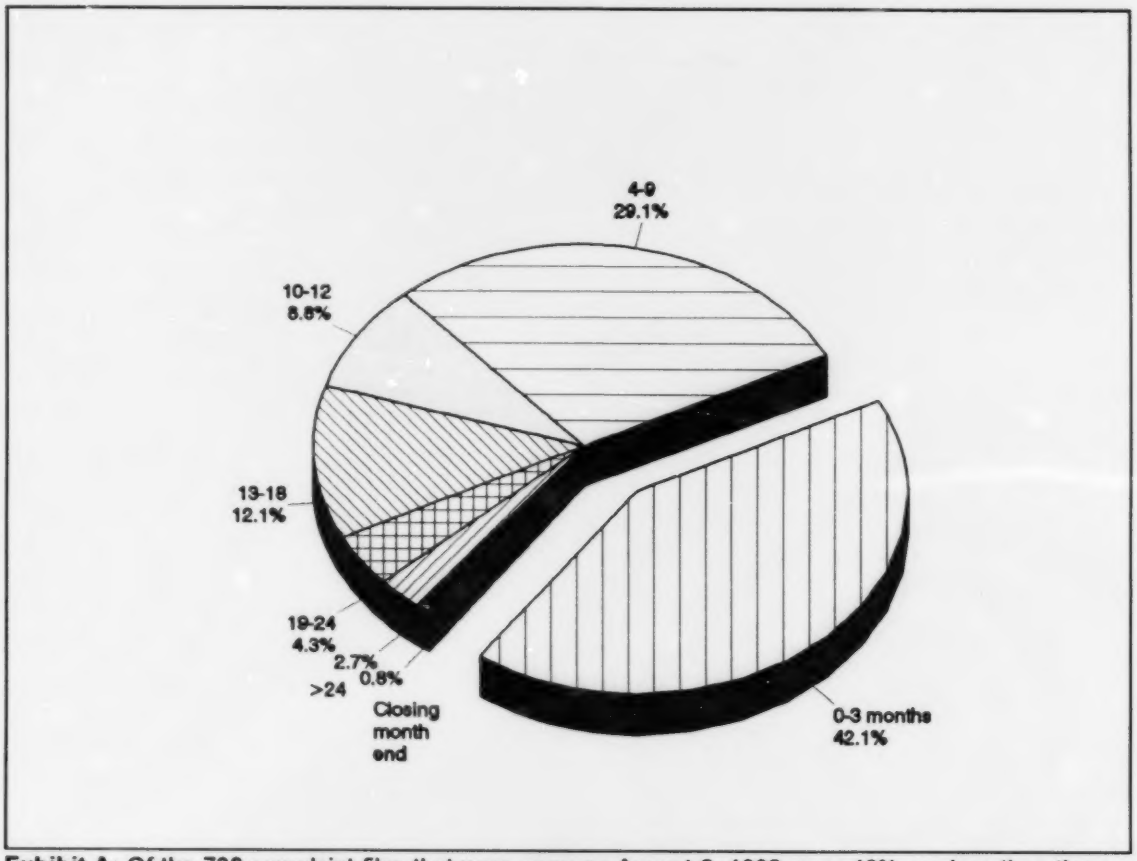


Exhibit A: Of the 738 complaint files that were open on August 6, 1992, over 40% are less than three months old.

Exhibit B shows the steps an inquiry or complaint follows. Any particular inquiry many stop at a variety of points depending on the complexity of both the inquiry or the investigation.

Exhibit B
Complaint Process

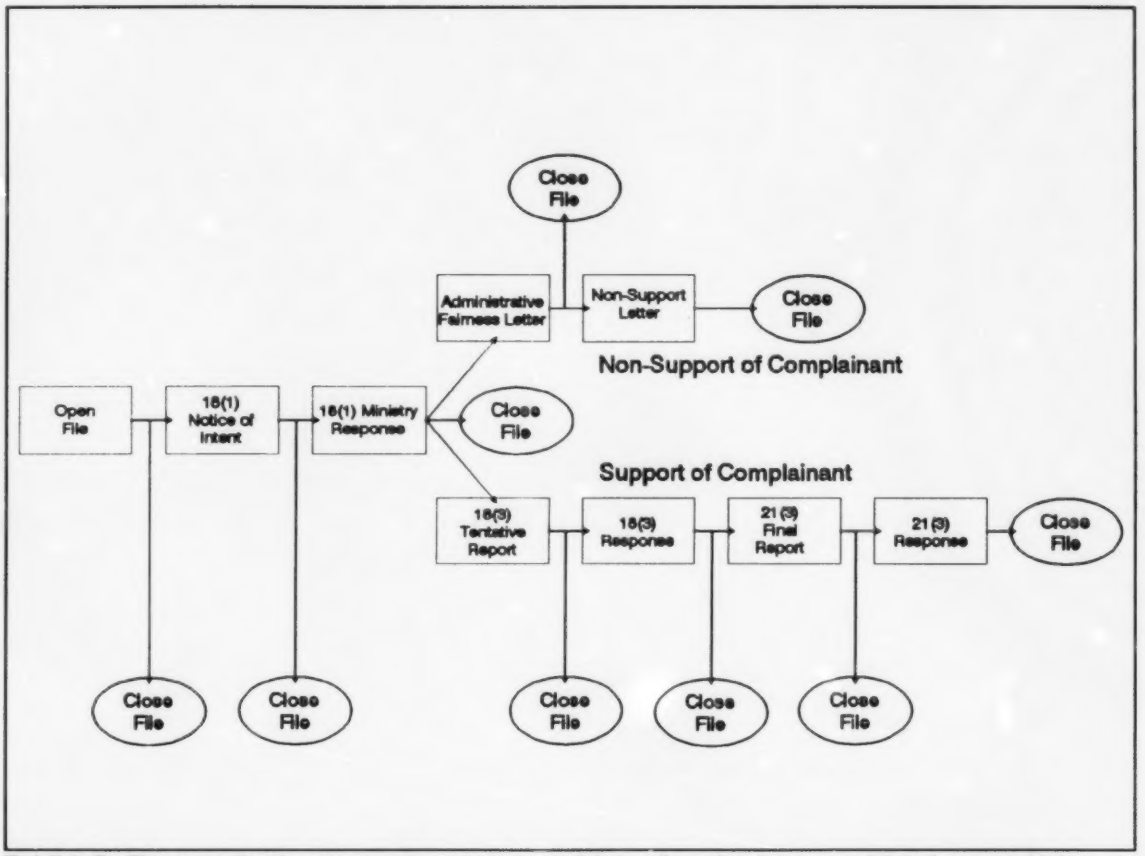


Exhibit B: The investigative process is set up to be fair to all parties to a complaint. A case which completes the entire process will require a minimum 291 days.

As can be seen from Exhibit B, the investigative process has numerous steps in order to ensure fairness to all parties involved. In addition to the time of the actual investigation, the process includes time for the complainant and the government organization to respond to the Ombudsman's letters and reports.

Considering the different steps and needs of the parties to the complaint, a complete process requires a minimum of 291 days. This requires that all parties respond to our inquiries within

requested times. This, of course, does not always happen, in which case the file will take longer to close.

Exhibit C below shows the times that are expected at each step of the process.

Exhibit C
Timing of Key Steps in Resolving Files 1991-92

Steps in the Investigative Process	Expected or usual days	Cumulative days
Open file to 18(1) Notice of Intent	21	
Waiting for 18(1) ministry response	30	51
Investigation of case typical of complexity. Tentative Report delivered to government organization	30	81
Waiting for response from government organization to investigation's findings	60	141
Government organization's response includes new information requiring further investigation.	30	171
New report delivered to government organization, time for response	30	201
Time for response to final report	60	261
Discussions with government organization to implement recommendations	30	291

The Office of the Ombudsman

The staff complement of the Ombudsman has not been increased to any significant degree since the inception of the institution in 1976. What has increased is the case load.

While staff size has remained largely unchanged over the last 17 years, the number of cases coming to the Ombudsman has increased threefold. Exhibit D on the following page shows the marked increase in cases handled by the staff.

Exhibit D
Inquiries and Complaints Compared to Staff Number

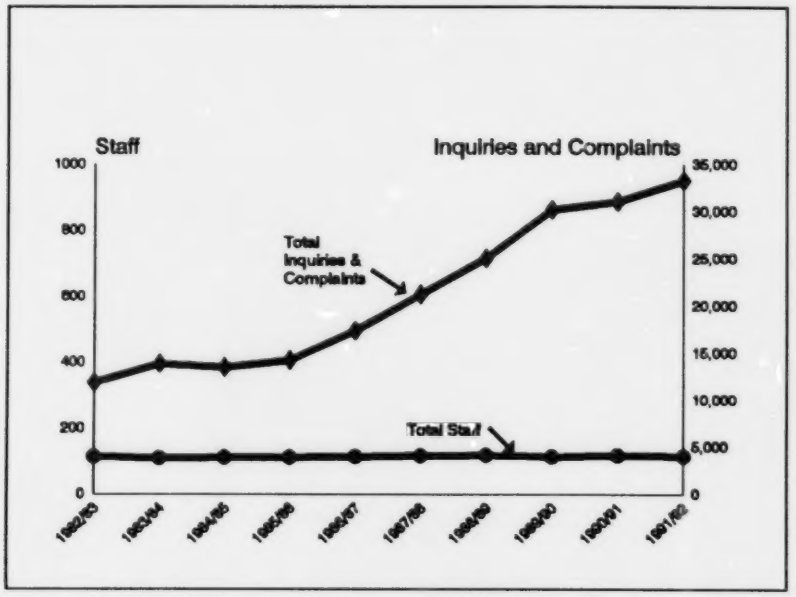


Exhibit E below shows the Ombudsman's budget since 1982-83.

Exhibit E
Ombudsman Budget

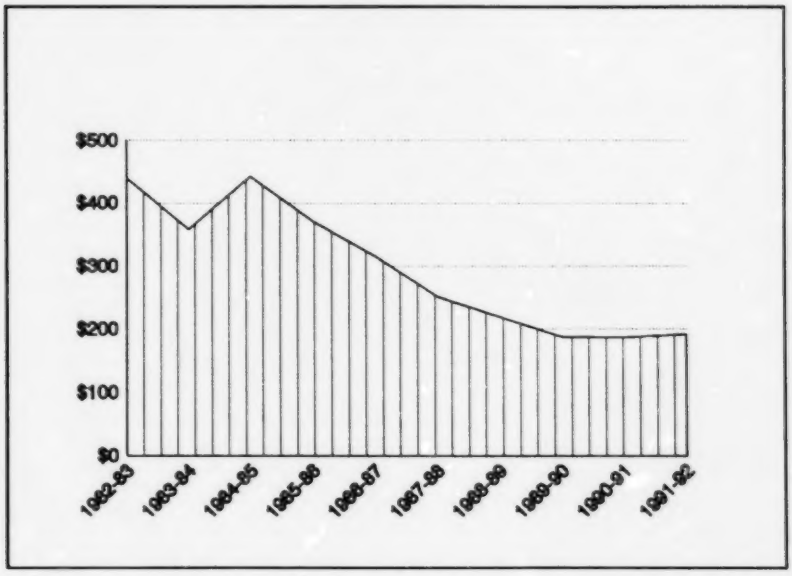
Year	Budget	Number of Cases
1982-83	$5,202,000	11,801
1983-84	$5,192,281	13,732
1984-85	$5,875,000	13,458
1985-86	$6,052,000	14,210

1986-87	$6,525,590	17,324
1987-88	$6,617,800	21,173
1988-89	$7,101,700	24,998
1989-90	$7,736,000	30,176
1990-91	$8,268,400	31,036
1991-92	$9,623,852	33,261
1992-93	$9,431,500	–

While the Ombudsman's budget has increased in nominal terms, in real terms (after taking into account inflation) the budget has remained fairly flat. Over the last ten years, the cost per complaint and inquiry has halved since 1977. Exhibit F below shows the change in costs over the last ten years.

Exhibit F

Cost per Complaints/Inquiries



The Ombudsman's Annual Report

One part of the Committee's current Standing Orders is to review the Ombudsman's Annual Reports. The report contains a variety of other information which should be of interest to every member of the Legislative Assembly. My 1991-92 Annual Report, for instance, discusses trends in complaints, public attitudes, extension of jurisdiction, legislative issues, and other matters which the Ombudsman considers to be important to bring to the Legislature's attention.

The Ombudsman's Annual Reports are intended to keep the public, Legislature, and international Ombudsman community informed of initiatives taken by the Ombudsman, trends noted, the operations of the office, and other matters which should be reported. Statistical data provided by the Ombudsman should be that which she considers useful to the Legislature.

In its 19th Report, the Committee said that it was generally pleased with the format of the Annual Report. It recommended three items be included in future reports. We will taking these suggestions into consideration for future annual reports.

It would be my hope that when the Ombudsman's Annual Report is presented to the Legislature, all Members would take the opportunity to offer suggestions to the Ombudsman with respect to the general subject of format and style of the Annual Report. I would be pleased to consider these suggestions in the preparation of subsequent annual reports.

Action of the Legislature on Unimplemented Recommendations

The Ombudsman presents a report to the Legislature only after the governmental organization, the Minister, and then the Premier have decided not to implement recommendations. I have exhausted my courses of action. My investigative powers have come to an end with respect to the matter.

Once the matter is placed before the Legislature, it is for the **Legislature** to act, to call government officials, even Ministers, to account for their failure to implement the Ombudsman's recommendations. The Legislature can investigate, pressure, pass resolutions, even change laws.
It is appropriate that the Ombudsman, having done what she is mandated to do, should leave to the Legislature what is now for it to do. It would then be both misleading and unbecoming for the Ombudsman to intervene, to demand action, to determine what was appropriate and what was not.

If the continuing failure by a government organization to implement a recommendation of the *Committee* were to be monitored and reported on by the Ombudsman, it would appear as if the onus were on the Ombudsman to obtain compliance. In fact, only the Committee and the Legislature have the powers to do so.

It brings disrepute both to the Ombudsman and to the Legislature if year after year the Ombudsman's Annual Reports show that the government has not chosen to implement a recommendation. The Legislature, in fact, may have determined implicitly or explicitly that it did not intend to take any action.

The Committee believes that since the *Act* does not expressly address the role to be played by the Ombudsman following the making of a report to the Legislature, the Ombudsman's further involvement would have to be implicit. It notes a court decision which revolves around the Ombudsman's discretion in re-opening an investigation which had been reported to the Legislature. The Court ruled that it would not limit the Ombudsman's powers in this respect since new facts may emerge, or where there was a change of circumstances affecting the conclusions and recommendations of the Ombudsman.

I concur that I have the power to reinvestigate at my discretion whenever I find there is reason to do so. That is not the issue here. The issue is that once I have investigated and reported to the Legislature that my recommendations have not been

implemented satisfactorily, it is for the Committee and/or the Legislature to determine what action, if any, it will take, and then to take it.

Recommendation

That the Legislature confirm that it is inappropriate for the Ombudsman to take a role in monitoring and reporting on the Legislature's response to her Reports as the Committee set out in its seventh recommendation.

In the cases of Mr. and Mrs. J, Mr. K, Mr. & Mrs. L, and Ms. M and the Ministry of Health (pages 3-5), and the matter of Ms. W and the Ministry of Health (pages 18-19), the course of action which the Committee took in these cases is the correct one vis-a-vis the Ombudsman's legislated mandate.

In all three instances, the Committee itself had monitored the Ministry's implementation of the Committee's recommendations. Thus the Committee strengthened the influence of the Ombudsman's office so that it can better serve the Ontario public by:

1. supporting the Ombudsman's recommendations; and

2. following through with the implementation of its own recommendations by monitoring the government's response to them.

For the same reasons outlined above, it is not appropriate to empower the Ombudsman to assist in the settlement of a dispute between a complainant and a governmental organization as envisaged in the first recommendation of the Committee's 19th Report. In reporting a case to the Legislature, the Ombudsman is confirming that she has exhausted all avenues towards resolving the issues which remain outstanding. Up until that time, the Ombudsman will have made every attempt to assist in resolving the issues. The Act currently provides ample authority to accomplish this goal.

Recommendation

That the Legislature confirm that implementation of the Committee's first recommendation to amend the* Ombudsman Act *to provide for the further involvement of the Ombudsman after she has completed her investigative process and reported to the Legislature is unwarranted and inappropriate.

Amendment to the Regulations

The Committee's 19th Report recommends amendments to the regulation made under the *Ombudsman Act* concerning staff's opinion of matters under investigation. The issue had not been raised with me since my appointment. From the outset of my tenure, however, I have made my staff aware that they must adhere to this standard not only with respect to investigations, but with respect to all aspects of their work with the public.

My staff often becomes privy to information outside the conduct of a formal investigation. I firmly support the principle. Since I believe that this standard of conduct is required under existing provisions of the *Ombudsman Act* Regulation, I consider the proposed amendment to be unnecessary.

The Role of a Steering/Standing Committee

When the Ombudsman presents a Report to the Legislature, the Report is referred to the Standing Committee. The roles of the Committee and Ombudsman and how the Report is to be handled have been a source of tension since the days of Ontario's first Ombudsman.

When the first Select Committee on the Ombudsman was established, it was done so at the request of the Ombudsman so that the Legislature might obtain assistance with his recommendations concerning the complex and controversial

North Pickering investigation. This was according to the traditional Ombudsman/Legislature pattern. For an Ombudsman, the essential purpose of a committee is to have a clear channel and mechanism to enlist the Legislature's support when she finds that a governmental organization has not implemented her recommendations in an appropriate and satisfactory manner. As well, a Committee provides a way to bring the government's refusal to implement her recommendations to public scrutiny.

In the years immediately after the establishment of an Ombudsman in Ontario, the Ombudsman had to come to the Legislature with a dozen or more cases annually in which governmental organizations had refused to implement the Ombudsman's recommendations. With that constant and demanding workload, the Legislature decided to convert the Select Committee into a Standing Committee.

Standing Committees, however, in the parliamentary system, generally have the responsibility to examine the operations and estimates of specified governmental organizations. The Ombudsman is not a governmental organization but is an officer of the Legislature. It is inappropriate for the Ombudsman to be subjected to the direct oversight and direction of a Committee.

This does not mean, however, that the Ombudsman should not be accountable. That accountability is now provided primarily by an annual audit of the Ombudsman's accounts and financial transactions by the Provincial Auditor and by the Ombudsman presenting an Annual Report to the Legislature. The Ombudsman's estimates are scrutinized by the Board of Internal Economy. Every use of the Ombudsman's power to report unimplemented recommendations is subject to scrutiny. For the ultimate protection, the *Act* provides that the Ombudsman can be removed from office for cause by the Legislature.

In the last two years, there have been no cases in which the Ombudsman required the support of the Legislature to implement a recommendation. That significant part of the Committee's normal workload has disappeared. There is no need for the Legislature to devote limited resources to a committee to gain

implementation of the Ombudsman's recommendations unless there are actual cases which require the Legislature's attention.

Recommendation

That the Legislature consider referring Reports of the Ombudsman with respect to unimplemented recommendations to a Select Committee appointed for the purpose of dealing with that particular Report.

The Select Committee's Mandate

The Order of Reference establishing a Select Committee should give it a clear and appropriate mandate, organization and procedures so that it can carry out its business and make its report. The Committee should at the outset set aside time to familiarize themselves with the nature of the Ombudsman's mandate and processes. The Committee should call before it the head of any governmental organization involved so that he or she may show why the Ombudsman's recommendations have not been satisfactorily implemented.

Daniel Jacoby, Quebec's Public Protector, in an appearance in May, 1991, before the National Assembly's Committee on Institutions, described what should **not** happen when a Committee considers an Ombudsman's Report.

> "If the parliamentary committee deems it appropriate to ask a Minister, senior government official or chief executive officer of a government organization to speak before it further to a report of the Public Protector criticizing the failure of this party to implement a recommendation, the hearing that would take place should not in any way serve to call into question the position taken by the Public Protector, but essentially, to discover the reasons why the [official] refuses to implement the Public Protector's recommendation...

> "The parliamentary committee should act in keeping with the spirit of the *Public Protector Act* by supporting, insofar as possible, the authority and credibility of the Public Protector... While I believe it necessary that the Public Protector be able to engage in a dialogue with the representatives of the National Assembly concerning the performance of his duties, I also believe it undesirable, especially in a context where party lines do not necessarily end at the doorway of the Committee, that the Committee be transformed into a court of appeal on the positions taken by the Public Protector."

The Quebec Committee agreed. In its Final Report, it said that the Committee which reviewed the failure of governmental organizations to implement the Ombudsman's recommendations

> "...must act within the dynamics of the *Public Protector Act* by supporting, as far as possible, the authority and credibility of the institution. It must not be transformed into a court of appeal for the recommendations of the Public Protector."

It would not

> "...call into question the autonomy that distinguishes the Public Protector or any ombudsman. A committee would be called upon only to investigate cases submitted to it by the Public Protector in a report on which it decides to hold hearings allowing it to hear, in particular, public administration representatives."

The procedure suggested here places a heavy burden on the Ombudsman and Committee alike. So that respect for her recommendations and the honour of the Legislature will not be tarnished, she should ensure that any case reported to the Legislature is procedurally correct, that her findings are beyond criticism, and that her recommendations are reasonable and completely worthy of support. The Committee has a responsibility to satisfy itself that indeed, the Ombudsman has followed the mandated procedure, that the investigation was

thorough and fair, and that the recommendations should, in fact, be implemented.

If the Ombudsman has in fact done what she has been mandated to do in a completely responsible way, the Committee must understand that anything less than full and unqualified support of the Ombudsman's recommendation lessens the value of her office both to the Legislature and to the public. The best guarantee of effective compliance with Ombudsman recommendations is a strong and effective committee working closely with a highly regarded Ombudsman.

Rules for the Guidance of the Ombudsman

When the *Ombudsman Act* was first established in Ontario, there was a great deal of uncertainty how the broad investigative powers of the Ombudsman might be exercised. Provisions were therefore made in the *Act* for the Legislature to make regulations setting out rules for the guidance of the Ombudsman should that be required. The power to make rules was rarely used, and no use of it has been made recently. If the Legislature finds that restrictions on the Ombudsman's exercise of her functions are necessary, amendments can be made to the *Act*.

In any case, it is no longer necessary to have a Committee to make general rules for the Ombudsman. Since its inception in 1975, the Ombudsman process has become well established. For some time no new "rules for the guidance of the Ombudsman" have been made.

Recommendation

That the Legislature consider amending the* Ombudsman Act *to remove references to "rules for the guidance of the Ombudsman."

Reviewing the Financial Affairs of the Ombudsman

One way the Legislative Assembly holds governments accountable for their management of public money and resources is the Standing Committee on Public Accounts. It is this Committee which determines whether the government has accounted accurately for the funds which the Legislature has appropriated to it, whether expenditures have been made for the purposes for which they were given, whether the necessary prudence has been exercised, and whether value has been received for the money spent. The Government demonstrates its accountability through this Committee.

It is appropriate that the Ombudsman also account to the Legislature for the funds it appropriates to her to carry out her mandate. However, in order to maintain in the eyes of public and Legislature alike that the Ombudsman is not a public servant, not a part of government, the Ombudsman should demonstrate accountability in another way visibly separate from that used for Cabinet and governmental officials.

In its 19th Report, the Standing Committee on the Ombudsman recommended that it become involved in examining a value-for-money audit that it would mandate. To some degree, the question of such an audit by the Provincial Auditor has been made moot since the Standing Committee also asked the Public Accounts Committee to direct the Provincial Auditor to make this audit.

The Provincial Auditor audits the Ombudsman annually under section 10 of the *Ombudsman Act* . (All such audits done in my tenure have been given unqualified approval.) The Provincial Auditor does not have any direct authority to audit the Ombudsman under the *Audit Act,* since his own mandate deals with governmental organizations and Crown Corporations.

Similarly, as an Officer of the Legislature, the Provincial Auditor is outside the jurisdiction of the Ombudsman. On the

other hand, it is arguable that the Public Accounts Committee could instruct the Provincial Auditor to conduct a special audit of the Ombudsman under s.17 of the *Audit Act*.

While this question remains open, in an effort to preserve the highest possible degree of cooperation, I have invited the Provincial Auditor to conduct a value-for-money audit when he conducts his annual audit of my accounts and financial transactions under provisions of s.10 of the *Ombudsman's Act*. I will welcome any suggestions the Provincial Auditor might have to make my operations more efficient, and I welcome the opportunity to discuss the changes and improvements which we in the Ombudsman's office are making in our efforts to make it a hallmark of progressive administration.

Every auditor has certain standards against which he can compare the practices of the organization being audited. In the case of the Provincial Auditor, whose responsibility is entirely with respect to governmental organizations and Crown corporations, one such standard is that set out in the *Manual of Administration* used by the provincial government.

The Ombudsman, however, has been given sufficient independence from governmental administrative control to ensure that she can organize, staff, and operate her office and engage whatever outside expertise she requires. Her independent status means the Ombudsman is not subject to the Management Board of Cabinet's *Manual of Government Administration*. Nonetheless, my standard is to uphold the highest of administrative practices in the administration of my mandate. Particularly, I believe my office should be a model with respect to administrative fairness.

Since the Ombudsman is not required to adhere to the Government's manual, it does not seem appropriate that the Ombudsman be measured against this standard. The complexity of the matter is illustrated when I am called upon in investigations to review the fairness of the Manual — the very document which is used to judge my operations. One way out of

this tangle is to utilize an auditor who is able to use other standards.

The audit of the Provincial Auditor, who is also an officer of the Legislature, is conducted by a private sector firm. Similarly, the accounts of the Ombudsman could be examined annually by a private firm of chartered accountants. The first audit and every fifth audit thereafter should be a value-for-money or comprehensive audit which considers such matters as economy, efficiency, and effectiveness in meeting objectives. The firm conducting the audit could be selected by the Ombudsman with the approval of the Provincial Auditor or the Board of Internal Economy.

Recommendation — ***That the Public Accounts Committee, perhaps in a session attended by both the Ombudsman and the Provincial Auditor, reconsider whether it is appropriate under s.17 of the* Audit Act *to instruct the Provincial Auditor to do a special audit on the Ombudsman.***

Recommendation — ***That the Legislature consider amending the* Ombudsman Act *so that:***

1. ***the accounts of the Ombudsman shall be audited annually by a private firm of chartered accountants selected independently;***
2. ***the Ombudsman shall cause the audit to be presented before the Board of Internal Economy within 30 days of receiving it; and***
3. ***the Board of Internal Economy will have sole responsibility for considering the audit of the Ombudsman, and that a summary of the audit shall be published in the Ombudsman's Annual Report.***

Recommendation — ***That the Legislature require, until such time as the* Ombudsman Act *provides otherwise, the audit of the Ombudsman to be tabled with the Board of Internal Economy which shall have the sole authority to examine the audit.***

Reviewing the Ombudsman Act

There is no doubt that from time to time the provisions of the *Ombudsman Act* should be reviewed. Such a review would have clear goals in mind, and be carefully planned so that a wide spectrum of interests and perspectives could be considered. My recent annual report provides a foundation to discuss the Ombudsman's jurisdiction and other matters related to the *Act*. Everyone will be best served if the review is a cooperative effort which gives a wide range of individuals and groups time to prepare their positions and to make their views known.

A Future Orientation

This special report to the Legislature takes a future orientation. I believe strongly that the events of the past months must be of little consequence in our future working together.

It is much more important to refine our roles and to create an atmosphere of trust and mutual respect. This can only be possible if we create a dialogue in which all parties can be heard, understood, and appreciated.

I hope that this special report marks the beginning of such a dialogue by providing a background for future talks.

APPENDIXES

A. Excerpts of Ombudsman and Committee Correspondence

B. Background Regarding The Ombudsman and the Standing Committee

A. EXCERPTS OF OMBUDSMAN AND COMMITTEE CORRESPONDENCE

June, 1990

The Ombudsman received a letter from the Clerk of the Committee that a Mr. W. had requested the committee to "consider his file." "I would appreciate it if you would forward his file to my office for use by the Subcommittee." A similar request was received a month later with respect to a Mr. S.

September, 1990

Ombudsman writes Chairperson of the Committee regarding these two requests to turn files over to the Committee:

> "Once again, the urgency of the meeting between the Committee and myself to develop the harmonious relationship which I mentioned in other letters to you becomes apparent. I hope you will be able to schedule such a meeting early in the Autumn.
>
> "In regard to this particular matter, the *Ombudsman Act* and the Regulations made under the *Act* do not provide for the Ombudsman to release the information requested. The *Act*

clearly forbids the Ombudsman to disclose any information received for her except as provided for in s.12(2), 'The Ombudsman may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.'

"Discussion of the subject by letter cannot accomplish what we might be able to accomplish in an informal discussion. Nonetheless, I can suggest that the Committee consider any communication received from the public, and if it has any concerns about which it wishes to raise with me, it can do so by letter. On receipt of such a letter, I can advise the Committee if appearing before it on the subject would be proper for me and useful to the Committee in carrying out its terms of reference, or if there is information which I can properly provide to the Committee which would be useful to it in its deliberations on the matter... I will be happy to give such matters my prompt and attentive consideration.

"I look forward to your reply in regard to a meeting with the Committee in the Autumn so that together we can consider this type of situation and many others which depend upon a mutual understanding so that the Ombudsman and the Committee may each fulfil their distinct mandates."

March, 1991

Ombudsman writes the Committee:

"... I'd like to discuss in frank terms [the] requests made by the Clerk of the Committee for documents from my files... In addition to the law, of course, the public must be assured of complete confidentiality in its dealings with me and my staff.

"Previous committees have understood this principle, and have excluded any of my correspondence with third parties from its purview. The only class of documents which

remains in controversy is that of correspondence between myself and a person who has filed a complaint with me. Obviously, this correspondence can be provided to the Committee by the complainant quite directly. Given this fact, it seems unnecessary that this become an issue which the Committee would wish to raise.

"The reason that I mention this matter in particular is that at least one letter has gone out from the Clerk of the Committee stating the Committee cannot deal with the complaint raised because I have refused to provide it with my files regarding the case. It is unfortunate that this sort of letter has gone out since it totally and unfairly mischaracterizes the situation.

"I do look forward to a productive and useful relationship with the Committee, and it seems important that this sort of problem be laid to rest as soon as possible. Again, I look very much forward to our meeting, and I look to your guidance in how this matter can best be placed on our agenda."

November, 1991

"It is natural that of the 31,000 or so people who approach my office each year for my assistance, there will be a few who are not satisfied with my findings. It is equally natural, I suppose, that when a few write to you to complain, you are really desirous to be helpful. It is a temptation which we have agreed should not be pursued except in a generic sense... The foundation which we established last spring is that I will be forthcoming with you with respect to the practices and procedures I follow, but that you will understand and respect the requirement for me to maintain confidentiality of individual cases. In fact, I welcome and solicit your assistance in making the operations of the Ombudsman of Ontario positively world-class."

May 28, 1992

Committee presents its 19th Report. It is tabled by the Assembly.

June, 1992

Ombudsman writes Committee Chairperson Mark Morrow:

> "... I appreciate the Report reflects the position of the Committee. I assure you that I have carefully considered each of the recommendations contained therein. However, since as a result of the Legislative schedule the Committee may not be meeting for several months, I am placing on the record now that I am unable to comply with the recommendations made in the report. Doing so would represent an abdication of my responsibility under the *Ombudsman Act* to exercise independently the discretion which the Legislature has given this office. To act under the Committee's direction would violate this internationally respected hallmark of the Ombudsman institution.
>
> "I am sure the Members will understand that there must be strong and compelling reason involved to cause me to adopt a position which does not comply with the wishes of the Committee. Through this letter, I also request that I be permitted to appear before the Committee to set out in full detail my position with respect to the Report and to engage in dialogue with the Committee on this matter. This will allow my response to the Committee's Report to be put on the public record, which, I believe, is an alternative preferable to a Special Report to the Assembly through the Speaker."

July 21, 1992

Chairperson Morrow writes Ombudsman:

"The Committee recommended in its 19th Report that it undertake a review of the Office of the Ombudsman in order to determine its effectiveness and to identify how it might be improved. To assist us in this respect please provide the following information ..."

July, 1992

"Your letter to me dated July 21 makes no mention of the letter I wrote to you on June 25 and to which you have not yet replied. It seems to me that it would be appropriate to hear from you in this respect or to be able to appear before the Committee. A meeting between us to discuss our respective mandates and their interrelationship seems essential before I could give consideration to your letter of July 21. I do look forward to discussing these matters with the Committee at its earliest convenience. As well, many of the points on the agenda for discussion have been raised in my 1991-92 Annual Report which has yet to be considered by the Committee and has not yet been the subject of dialogue between us.

B. Background Regarding The Ombudsman and the Standing Committee

The first Ombudsman, Arthur Maloney, strongly disagreed with a position taken by the Select Committee with respect to a personnel matter, and on March 18, 1977, he wrote the Select Committee that it lacked jurisdiction and was not the proper forum for consideration of the matter:

> "It is my perception that if your Select Committee is to become involved ... in any similar matter emanating from other Members of the Legislature or indeed from the general public in the future, the operations of the office of the Ombudsman would be seriously impaired and the structure of the office as it currently exists radically altered...
>
> "I know of no other legislative Ombudsman where the political arm of the Legislature has attempted to assert a right to exercise the kind of control over the operation of the Ombudsman's office that your involvement ... would entail... I am fully prepared to consider any contrary position the Committee may wish to take and to reconsider my position in light of such a submission. So far this has not been forthcoming."

Ontario's second Ombudsman, the Honourable Donald Morand, also was involved in a dispute with the Select Committee, also with respect to personnel. I totally subscribe to his remarks on that occasion:

> "I share the view expressed by some of the members that a confrontation between the Committee and the Ombudsman would serve no one — least of all the citizens of this province. History has proven this to be the case. We should therefore strive together to do our best to ensure that history does not repeat itself by assiduously avoiding a confrontation, if this is possible.
>
> "I think you would agree that I have demonstrated over the past three years that I am prepared to cooperate with the Committee within reason... However, where in my view a request by the Committee, which clearly exceeds its mandate, impinges on the very independence of the Office of the Ontario Ombudsman, the line must be drawn, and it is accordingly here that I have drawn it. It is my respectful submission to you that the reason for the Committee's dilemma is simply: some Committee members still lack a basic understanding of the mandate of the Select Committee on the Ombudsman as that mandate relates to the Ombudsman...
>
> "Our Legislature has ensured, by the inclusion of s.8(1) and other procedural safeguards that the Ombudsman is not only independent of the administrative arm of government, but is also free in the day-to-day operation of his office from interference by the political arm of the Legislature...
>
> "As I explained in my opening statement before the Committee, I firmly believe that a Select Committee can be a valuable complement to an Ombudsman's office, provided that each works closely with the other while at the same time respecting their different spheres of responsibility... I am confident that you will receive the observations and concerns expressed in this letter in the constructive manner in which my comments were intended, and that the results will make

for an even improved relationship between your Committee and my Office."

In the same tradition, I found it necessary to tell the Committee when after many months I was finally able to do so in April, 1991:

> "In situations where government does not follow my recommendations, I may choose to bring the matter to your attention. The Legislature has created this Committee to assist it in considering my reports and the action I am recommending. That is the traditional and original role of the Committee as I see it, and I will be looking forward to hearing your own views ... I mention that at the outset because somehow in recent years, in my opinion, the relationship between the Ombudsman and the committee has kind of slid off the tracks. Somehow it seemed to have been forgotten that the Ombudsman was an Officer of the Legislature, not a creature of government. It may not be too strong to say, if you look back at the last couple of years, that even an adversarial relationship developed between the Ombudsman and the Committee...
>
> "I have been asked, for instance, to provide my files to the Committee although by law I am prohibited from doing so, and of course I am not able to comply with that request. In the past, I have found the Committee considering me as if I were a party to a complaint. There was even a suggestion that I go to arbitration regarding a recommendation I made...
>
> "I think it best if I talk frankly with you and encourage you to talk frankly with me. I would only ask that we attempt to maintain the dialogue as long and as frequently as necessary so that we can develop a consensus on a productive working relationship which, I believe, we all owe the people of this province."

MISSION STATEMENT

It is the mission of the Ombudsman of Ontario to assist the people of Ontario to enjoy public service of the highest quality from provincial government organizations.

The Ombudsman achieves this goal through the prompt efficient investigation and resolution of complaints, issues and concerns which are brought to her attention or are investigated on her own initiative.

While her services are available to all members of the Ontario public, the Ombudsman is particularly alert to the need to serve those individuals and groups in society who are most vulnerable to injustice.

The Ombudsman is assisted in retaining the confidence of public and officials by a professional staff who uphold the same high professional standards expected of the Ombudsman herself. Through internal training and professional development programs, the Ombudsman provides opportunities for her staff to enhance their capacity to provide service to the public.

The Ombudsman's services are kept relevant and appropriate to the people of Ontario as needs and circumstances change, and she makes all possible effort to ensure that all people in Ontario are aware of the availability of her services, and that they are accessible to all who wish to use them. The processes and procedures she uses are "people friendly". The Ombudsman's services are rendered in a manner which is culturally-appropriate, timely, cost-efficient, and effective.

The Ombudsman acts in an impartial manner, using objective standards, so the people of Ontario may have confidence in her decisions.

The Ombudsman's educational activities increase the public's knowledge of Ombudsmanship as a mechanism of direct participation in the improvement of democracy.

The Ombudsman encourages governmental organizations to regard her as a creative resource for progressive government administration.

The Ombudsman carries out her mandate with appropriate regard for the role of the Legislative Assembly, the Standing Committee on the Ombudsman, and individual Members.

The Ombudsman contributes to the evolution of Ombudsmanship by developing standards and criteria regarding government administration.

The Ombudsman ensures that her own organization adheres to the standards which are expected of others.

The Ombudsman demonstrates the development and use of appropriate techniques and mechanisms to resolve issues and concerns.

In addition to investigating individual complaints, the Ombudsman examines systemic and "own motion" concerns.